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HOUSE BILL 1202

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

J. "ANDY" KISSNER

AN ACT

**RELATING TO HEALTH; PROVIDING FOR AN INDIVIDUAL'S RIGHT TO MAKE
HEALTH-CARE DECISIONS; PROVIDING GUIDELINES FOR ADVANCE HEALTH-
CARE DIRECTIVES; AMENDING AND REPEALING SECTIONS OF THE NMSA
1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 24-7A-1 NMSA 1978 (being Laws 1995,
Chapter 182, Section 1) is amended to read:**

**"24-7A-1. DEFINITIONS. -- As used in the Uniform Health-Care
Decisions Act:**

**A. "advance health-care directive" means an
individual instruction or a power of attorney for health care
made, in either case, while the individual has capacity;**

**B. "agent" means an individual designated in a power
of attorney for health care to make a health-care decision for**

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1 the individual granting the power;

2 C. "capacity" means an individual's ability to
3 understand and appreciate the nature and consequences of
4 proposed health care, including its significant benefits, risks
5 and alternatives to proposed health care and to make and
6 communicate an informed health-care decision. A determination
7 of lack of capacity shall be made only according to the
8 provisions of Section ~~[11 of the Uniform Health-Care Decisions~~
9 ~~Act]~~ 24-7A-11 NMSA 1978;

10 D. "emancipated minor" means a person under the age
11 of eighteen who has never been married, who is on active duty in
12 the armed forces or who is between the ages of sixteen and
13 eighteen and has been declared by court order to be emancipated;

14 ~~[D-]~~ E. "guardian" means a judicially appointed
15 guardian or conservator having authority to make a health-care
16 decision for an individual;

17 ~~[E-]~~ F. "health care" means any care, treatment,
18 service or procedure to maintain, diagnose or otherwise affect
19 an individual's physical or mental condition;

20 ~~[F-]~~ G. "health-care decision" means a decision made
21 by an individual or the individual's agent, guardian or
22 surrogate, regarding the individual's health care, including:

23 (1) selection and discharge of health-care
24 providers and institutions;

25 (2) approval or disapproval of diagnostic

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1 tests, surgical procedures, programs of medication and orders
2 not to resuscitate; [~~and~~]

3 (3) directions relating to life-sustaining
4 treatment, including withholding or withdrawing life-sustaining
5 treatment and the termination of life support; and

6 [~~(3)~~] (4) directions to provide, withhold or
7 withdraw artificial nutrition and hydration and all other forms
8 of health care;

9 [~~G.~~] H. "health-care institution" means an
10 institution, facility or agency licensed, certified or otherwise
11 authorized or permitted by law to provide health care in the
12 ordinary course of business;

13 [~~H.~~] I. "health-care provider" means an individual
14 licensed, certified or otherwise authorized or permitted by law
15 to provide health care in the ordinary course of business or
16 practice of a profession;

17 [~~I.~~] J. "individual instruction" means an
18 individual's direction concerning a health-care decision for the
19 individual, made while the individual has capacity;

20 K. "life-sustaining treatment" means any medical
21 treatment or procedure without which the individual is likely to
22 die within a relatively short time, as determined to a
23 reasonable degree of medical certainty by the primary
24 physicians;

25 [~~J.~~] L. "person" means an individual, corporation,

1 business trust, estate, trust, partnership, association, joint
2 venture, government, governmental subdivision, agency or
3 instrumentality or any other legal or commercial entity;

4 [K-] M. "physician" means an individual authorized
5 to practice medicine or osteopathy;

6 [L-] N. "power of attorney for health care" means
7 the designation of an agent to make health-care decisions for
8 the individual granting the power, made while the individual has
9 capacity;

10 [M-] O. "primary physician" means a physician
11 designated by an individual or the individual's agent, guardian
12 or surrogate to have primary responsibility for the individual's
13 health care or, in the absence of a designation or if the
14 designated physician is not reasonably available, a physician
15 who undertakes the responsibility;

16 P. "principal" means an adult who, while having
17 capacity, has made a power of attorney for health care by which
18 he delegates his right to make health-care decisions for himself
19 to an agent;

20 [N-] Q. "qualified health-care professional" means a
21 health-care provider who is a physician, physician assistant,
22 nurse practitioner, nurse, psychologist or social worker;

23 [O-] R. "reasonably available" means readily able to
24 be contacted without undue effort and willing and able to act in
25 a timely manner considering the urgency of the patient's

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1 health-care needs;

2 [P-] S. "state" means a state of the United States,
3 the District of Columbia, the commonwealth of Puerto Rico or a
4 territory or insular possession subject to the jurisdiction of
5 the United States;

6 [Q-] T. "supervising health-care provider" means the
7 primary physician or, if there is no primary physician or the
8 primary physician is not reasonably available, the health-care
9 provider who has undertaken primary responsibility for an
10 individual's health care; [and]

11 [R-] U. "surrogate" means an individual, other than
12 a patient's agent or guardian, authorized under the Uniform
13 Health-Care Decisions Act to make a health-care decision for the
14 patient; and

15 V. "ward" means an adult or emancipated minor for
16 whom a guardian has been appointed."

17 Section 2. Section 24-7A-3 NMSA 1978 (being Laws 1995,
18 Chapter 182, Section 3) is amended to read:

19 "24-7A-3. REVOCATION OF ADVANCE HEALTH-CARE DIRECTIVE. --

20 A. An individual, while having capacity, may revoke
21 the designation of an agent [~~only~~] either by a signed writing or
22 by personally informing the supervising health-care provider.
23 If the individual cannot sign, a written revocation must be
24 signed for the individual and be witnessed by two witnesses,
25 each of whom has signed at the direction and in the presence of

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1 the individual and of each other.

2 B. An individual, while having capacity, may revoke
3 all or part of an advance health-care directive, other than the
4 designation of an agent, at any time and in any manner that
5 communicates an intent to revoke.

6 C. A health-care provider, agent, guardian or
7 surrogate who is informed of a revocation shall promptly
8 communicate the fact of the revocation to the supervising
9 health-care provider and to any health-care institution at which
10 the patient is receiving care.

11 D. The filing of a petition for or a decree of
12 annulment, divorce, dissolution of marriage or legal separation
13 revokes a previous designation of a spouse as agent unless
14 otherwise specified in the decree or in a power of attorney for
15 health care. A designation revoked solely by this subsection is
16 revived by the individual's remarriage to the former spouse, by
17 a nullification of the divorce, annulment or legal separation or
18 by the dismissal or withdrawal, with the individual's consent,
19 of a petition seeking annulment, divorce, dissolution of
20 marriage or legal separation.

21 E. An advance health-care directive that conflicts
22 with an earlier advance health-care directive revokes the
23 earlier directive to the extent of the conflict."

24 Section 3. Section 24-7A-4 NMSA 1978 (being Laws 1995,
25 Chapter 182, Section 4) is amended to read:

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1 "24-7A-4. OPTIONAL FORM -- The following form may, but need
2 not, be used to create an advance health-care directive. The
3 other sections of the Uniform Health-Care Decisions Act govern
4 the effect of this or any other writing used to create an
5 advance health-care directive. An individual may complete or
6 modify all or any part of the following form:

7 "OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE

8 Explanation

9 You have the right to give instructions about your own
10 health care. You also have the right to name someone else to
11 make health-care decisions for you. This form lets you do
12 either or both of these things. It also lets you express your
13 wishes regarding the designation of your primary physician.

14 THIS FORM IS OPTIONAL. Each paragraph and word of this
15 form is also optional. If you use this form, you may [~~strike~~
16 cross out, complete or modify all or any part of it. You are
17 free to use a different form. [~~You do not have to sign any~~
18 ~~form-~~] If you use this form, be sure to sign it and date it.

19 PART 1 of this form is a power of attorney for health care.
20 Part 1 lets you name another individual as agent to make
21 health-care decisions for you if you become incapable of making
22 your own decisions or if you want someone else to make those
23 decisions for you now even though you are still capable. You
24 may also name an alternate agent to act for you if your first
25 choice is not willing, able or reasonably available to make

1 decisions for you. Unless related to you, your agent may not be
2 an owner, operator or employee of a health-care institution at
3 which you are receiving care.

4 Unless the form you sign limits the authority of your
5 agent, your agent may make all health-care decisions for you.
6 This form has a place for you to limit the authority of your
7 agent. You need not limit the authority of your agent if you
8 wish to rely on your agent for all health-care decisions that
9 may have to be made. If you choose not to limit the authority
10 of your agent, your agent will have the right to:

- 11 (a) consent or refuse consent to any care,
12 treatment, service or procedure to maintain,
13 diagnose or otherwise affect a physical or
14 mental condition;
- 15 (b) select or discharge health-care providers and
16 institutions;
- 17 (c) approve or disapprove diagnostic tests, surgical
18 procedures, programs of medication and orders
19 not to resuscitate; and
- 20 (d) direct the provision, withholding or withdrawal
21 of artificial nutrition and hydration and all
22 other forms of health care.

23 PART 2 of this form lets you give specific instructions
24 about any aspect of your health care. Choices are provided for
25 you to express your wishes regarding [the provision, withholding

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1 ~~or withdrawal of treatment to keep you alive]~~ life-sustaining
2 treatment, including the provision of artificial nutrition and
3 hydration, as well as the provision of pain relief. Space is
4 also provided for you to add to the choices you have made or for
5 you to write out any additional wishes.

6 PART 3 of this form lets you designate a physician to have
7 primary responsibility for your health care.

8 After completing this form, sign and date the form at the
9 end. It is recommended but not required that you request two
10 other individuals to sign as witnesses. Give a copy of the
11 signed and completed form to your physician, to any other
12 health-care providers you may have, to any health-care
13 institution at which you are receiving care and to any
14 health-care agents you have named. You should talk to the
15 person you have named as agent to make sure that he or she
16 understands your wishes and is willing to take the
17 responsibility.

18 You have the right to revoke this advance health-care
19 directive or replace this form at any time.

20 * * * * *

21 PART 1

22 POWER OF ATTORNEY FOR HEALTH CARE

23 (1) DESIGNATION OF AGENT: I designate the following
24 individual as my agent to make health-care decisions for me:

25 _____

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1 (name of individual you choose as agent)

2 _____

3 (address) (city) (state) (zip code)

4 _____

5 (home phone) (work phone)

6 If I revoke my agent's authority or if my agent is not
7 willing, able or reasonably available to make a health-care
8 decision for me, I designate as my first alternate agent:

9 _____

10 (name of individual you choose as first alternate agent)

11 _____

12 (address) (city) (state) (zip code)

13 _____

14 (home phone) (work phone)

15 If I revoke the authority of my agent and first alternate
16 agent or if neither is willing, able or reasonably available to
17 make a health-care decision for me, I designate as my second
18 alternate agent:

19 _____

20 (name of individual you choose as second alternate agent)

21 _____

22 (address) (city) (state) (zip code)

23 _____

24 (home phone) (work phone)

25 (2) AGENT'S AUTHORITY: My agent is authorized to

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1 obtain and review medical records, reports and information about
2 me and to make all health-care decisions for me, including
3 decisions to provide, withhold or withdraw artificial nutrition,
4 hydration and all other forms of health care to keep me alive,
5 except as I state here:

6 _____
7 _____
8 _____

9 (Add additional sheets if needed.)

10 (3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My
11 agent's authority becomes effective when my primary physician
12 and one other qualified health-care professional determine that
13 I am unable to make my own health-care decisions [~~unless I mark~~
14 ~~the following box~~]. If I [~~mark~~] initial this box [], my
15 agent's authority to make health-care decisions for me takes
16 effect immediately.

17 (4) AGENT'S OBLIGATION: My agent shall make
18 health-care decisions for me in accordance with this power of
19 attorney for health care, any instructions I give in Part 2 of
20 this form and my other wishes to the extent known to my agent.
21 To the extent my wishes are unknown, my agent shall make
22 health-care decisions for me in accordance with what my agent
23 determines to be in my best interest. In determining my best
24 interest, my agent shall consider my personal values to the
25 extent known to my agent.

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1 (5) NOMINATION OF GUARDIAN: If a guardian of my
2 person needs to be appointed for me by a court, I nominate the
3 agent designated in this form. If that agent is not willing,
4 able or reasonably available to act as guardian, I nominate the
5 alternate agents whom I have named, in the order designated.

6 PART 2

7 INSTRUCTIONS FOR HEALTH CARE

8 If you are satisfied to allow your agent to determine
9 what is best for you in making end-of-life decisions, you need
10 not fill out this part of the form. If you do fill out this
11 part of the form, you may ~~[strike]~~ cross out any wording you do
12 not want.

13 (6) END-OF-LIFE DECISIONS: If I am unable to make
14 or communicate decisions regarding my health care, and IF (i) I
15 have an incurable or irreversible condition that will result in
16 my death within a relatively short time, OR (ii) I become
17 unconscious and, to a reasonable degree of medical certainty, I
18 will not regain consciousness, OR (iii) the likely risks and
19 burdens of treatment would outweigh the expected benefits, THEN
20 I direct that my health-care providers and others involved in my
21 care provide, withhold or withdraw treatment in accordance with
22 the choice I have ~~[marked]~~ initialed below in one of the
23 following three boxes:

24 [] (a) ~~[Choice]~~ I CHOOSE NOT To Prolong Life

25 I do not want my life to be prolonged. ~~[if (i) I have~~

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1 ~~an incurable and irreversible condition that will result in my~~
2 ~~death within a relatively short time, (ii) I become unconscious~~
3 ~~and, to a reasonable degree of medical certainty, I will not~~
4 ~~regain consciousness or (iii) the likely risks and burdens of~~
5 ~~treatment would outweigh the expected benefits, OR] I understand~~
6 ~~that "not prolonging my life" means that I do not want any life-~~
7 ~~sustaining treatment, including any artificial nutrition or~~
8 ~~hydration.~~

9 [] (b) [Choice] I CHOOSE To Prolong Life
10 I want my life to be prolonged as long as possible
11 within the limits of generally accepted health-care standards.

12 [] (c) I CHOOSE To Let My Agent Decide
13 My agent under my power of attorney for health care
14 may make life-sustaining treatment decisions for me.

15 (7) ARTIFICIAL NUTRITION AND HYDRATION: If I have
16 [~~selected the above choice~~] chosen above NOT to prolong life
17 [~~under specified conditions~~], I also specify [~~that I _____ do or~~
18 ~~_____ do not want artificial nutrition and hydration provided to~~
19 ~~me~~] by marking my initials below:

20 [] I DO NOT want artificial nutrition OR

21 [] I DO want artificial nutrition.

22 [] I DO NOT want artificial hydration unless
23 required for my comfort OR

24 [] I DO want artificial hydration.

25 (8) RELIEF FROM PAIN: Regardless of the choices I

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1 have made in this form and except as I state in the following
2 space, I direct that [~~treatment for easing~~] the best medical
3 care possible to keep me clean, comfortable and free of pain or
4 discomfort be provided at all times so that my dignity is
5 maintained, even if [~~it~~] this care hastens my death:

6 _____
7 _____

8 (9) OTHER WISHES: (If you wish to write your own
9 instructions, or if you wish to add to the instructions you have
10 given above, you may do so here.) I direct that:

11 _____
12 _____

13 (Add additional sheets if needed.)

14 PART 3

15 PRIMARY PHYSICIAN

16 (10) I designate the following physician as my
17 primary physician:

18 _____

19 (name of physician)

20 _____

21 (address) (city) (state) (zip code)

22 _____

23 (phone)

24 If the physician I have designated above is not willing,
25 able or reasonably available to act as my primary physician, I

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1 designate the following physician as my primary physician:

2 _____

3 (name of physician)

4 _____

5 (address) (city) (state) (zip code)

6 _____

7 (phone)

8 * * * * *

9 (11) EFFECT OF COPY: A copy of this form has the
10 same effect as the original.

11 (12) REVOCATION: I understand that I may revoke
12 this OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE at any time, and
13 that if I revoke it, I should promptly notify my supervising
14 health-care provider and any health-care institution where I am
15 receiving care and any others to whom I have given copies of
16 this power of attorney. I understand that I may revoke the
17 designation of an agent only by a signed writing or by
18 personally informing the supervising health-care provider.

19 (13) SIGNATURES: Sign and date the form here:

20 _____

21 (date)

(sign your name)

22 _____

23 (address)

(print your name)

24 _____

25 (city)

(state)

(your social security number)

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1 (Optional) SIGNATURES OF WITNESSES:

2 First witness

Second witness

3 _____
4 (print name)

_____ (print name)

5 _____
6 (address)

_____ (address)

7 _____
8 (city) (state)

_____ (city) (state)

9 _____
10 (signature of witness)

_____ (signature of witness)

11 _____
12 (date)

_____ (date)". "

13 Section 4. Section 24-7A-5 NMSA 1978 (being Laws 1995,
14 Chapter 182, Section 5) is amended to read:

15 "24-7A-5. DECISIONS BY SURROGATE. --

16 A. A surrogate may make a health-care decision for a
17 patient who is an adult or emancipated minor if the patient has
18 been determined according to the provisions of Section [11 of
19 ~~the Uniform Health Care Decisions Act~~] 24-7A-11 NMSA 1978 to
20 lack capacity and no agent or guardian has been appointed or the
21 agent or guardian is not reasonably available.

22 B. An adult or emancipated minor, while having
23 capacity, may designate any individual to act as surrogate by
24 personally informing the supervising health-care provider. In
25 the absence of a designation or if the designee is not

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1 reasonably available, any member of the following classes of the
2 patient's family who is reasonably available, in descending
3 order of priority, may act as surrogate:

4 (1) the spouse, unless legally separated or
5 unless there is a pending petition for annulment, divorce,
6 dissolution of marriage or legal separation;

7 (2) an individual in a long-term relationship
8 of indefinite duration with the patient in which the individual
9 has demonstrated an actual commitment to the patient similar to
10 the commitment of a spouse and in which the individual and the
11 patient consider themselves to be responsible for each other's
12 well-being;

13 (3) an adult child;

14 (4) a parent;

15 (5) an adult brother or sister; or

16 (6) a grandparent.

17 C. If none of the individuals eligible to act as
18 surrogate under Subsection B of this section is reasonably
19 available, an adult who has exhibited special care and concern
20 for the patient, who is familiar with the patient's personal
21 values and who is reasonably available may act as surrogate.

22 D. A surrogate shall communicate his ~~[or her]~~
23 assumption of authority as promptly as practicable to the
24 patient, ~~[and]~~ to members of the patient's family specified in
25 Subsection B of this section who can be readily contacted and to

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1 the supervising health-care provider.

2 E. If more than one member of a class assumes
3 authority to act as surrogate and they do not agree on a
4 health-care decision and the supervising health-care provider is
5 so informed, the supervising health-care provider shall comply
6 with the decision of a majority of the members of that class who
7 have communicated their views to the provider. If the class is
8 evenly divided concerning the health-care decision and the
9 supervising health-care provider is so informed, that class and
10 all individuals having lower priority are disqualified from
11 making the decision.

12 F. A surrogate shall make a health-care decision in
13 accordance with the patient's individual instructions, if any,
14 and other wishes to the extent known to the surrogate.
15 Otherwise, the surrogate shall make the decision in accordance
16 with the surrogate's determination of the patient's best
17 interest. In determining the patient's best interest, the
18 surrogate shall consider the patient's personal values to the
19 extent known to the surrogate.

20 G. A health-care decision made by a surrogate for a
21 patient is effective without judicial approval.

22 H. A patient, at any time, may disqualify ~~[another]~~
23 any person, including a member of the patient's family, from
24 acting as the patient's surrogate by a signed writing or by
25 personally informing a health-care provider of the

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1 disqualification. A health-care provider who is informed by the
2 patient of a disqualification shall promptly communicate the
3 fact of disqualification to the supervising health-care provider
4 and to any health-care institution at which the patient is
5 receiving care.

6 I. Unless related to the patient by blood, marriage
7 or adoption, a surrogate may not be an owner, operator or
8 employee of a [~~residential long-term~~] health-care institution at
9 which the patient is receiving care.

10 J. A supervising health-care provider may require an
11 individual claiming the right to act as surrogate for a patient
12 to provide a written declaration under penalty of perjury
13 stating facts and circumstances reasonably sufficient to
14 establish the claimed authority. "

15 Section 5. Section 24-7A-7 NMSA 1978 (being Laws 1995,
16 Chapter 182, Section 7) is amended to read:

17 "24-7A-7. OBLIGATIONS OF HEALTH-CARE PROVIDER. --

18 A. Before implementing a health-care decision made
19 for a patient, a supervising health-care provider shall promptly
20 communicate to the patient the decision made and the identity of
21 the person making the decision.

22 B. A supervising health-care provider who knows of
23 the existence of an advance health-care directive, a revocation
24 of an advance health-care directive, a challenge to a
25 determination of lack of capacity or a designation or

1 disqualification of a surrogate shall promptly record its
2 existence in the patient's health-care record and, if it is in
3 writing, shall request a copy and, if one is furnished, shall
4 arrange for its maintenance in the health-care record.

5 C. A ~~[primary physician]~~ supervising health-care
6 provider who makes or is informed of a determination that a
7 patient lacks or has recovered capacity or that another
8 condition exists ~~[which]~~ that affects an individual instruction
9 or the authority of an agent, guardian or surrogate shall
10 promptly record the determination in the patient's health-care
11 record and communicate the determination to the patient and to
12 any person then authorized to make health-care decisions for the
13 patient.

14 D. Except as provided in Subsections E and F of this
15 section, a health-care provider or health-care institution
16 providing care to a patient shall comply:

17 (1) ~~[comply]~~ before and after the patient is
18 determined to lack capacity, with an individual instruction of
19 the patient made while the patient had capacity;

20 (2) ~~[comply]~~ with a reasonable interpretation
21 of that instruction made by a person then authorized to make
22 health-care decisions for the patient; and

23 (3) ~~[comply]~~ with a health-care decision for
24 the patient ~~[which]~~ that is not contrary to an individual
25 instruction of the patient and is made by a person then

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1 authorized to make health-care decisions for the patient, to the
2 same extent as if the decision had been made by the patient
3 while having capacity.

4 E. A health-care provider may decline to comply with
5 an individual instruction or health-care decision for reasons of
6 conscience. A health-care institution may decline to comply
7 with an individual instruction or health-care decision if the
8 instruction or decision is contrary to a policy of the health-
9 care institution [~~which~~] that is expressly based on reasons of
10 conscience and if the policy was timely communicated to the
11 patient or to a person then authorized to make health-care
12 decisions for the patient.

13 F. A health-care provider or health-care institution
14 may decline to comply with an individual instruction or
15 health-care decision that requires medically ineffective health
16 care or health care contrary to generally accepted health-care
17 standards applicable to the health-care provider or health-care
18 institution. "Medically ineffective health care" means
19 treatment that would not offer the patient any significant
20 benefit, as determined by a physician.

21 G. A health-care provider or health-care institution
22 that declines to comply with an individual instruction or
23 health-care decision shall:

24 (1) promptly so inform the patient, if
25 possible, and any person then authorized to make health-care

1 decisions for the patient;

2 (2) provide continuing care to the patient
3 until a transfer can be effected; and

4 (3) unless the patient or person then
5 authorized to make health-care decisions for the patient refuses
6 assistance, immediately make all reasonable efforts to assist in
7 the transfer of the patient to another health-care provider or
8 health-care institution that is willing to comply with the
9 instruction or decision.

10 H. A health-care provider or health-care institution
11 may not require or prohibit the execution or revocation of an
12 advance health-care directive as a condition for providing
13 health care.

14 I. The Uniform Health-Care Decisions Act does not
15 require or permit a health-care institution or health-care
16 provider to provide any type of health care for which the
17 health-care institution or health-care provider is not licensed,
18 certified or otherwise authorized or permitted by law to
19 provide. "

20 Section 6. Section 24-7A-10 NMSA 1978 (being Laws 1995,
21 Chapter 182, Section 10) is amended to read:

22 "24-7A-10. STATUTORY DAMAGES. --

23 A. A health-care provider or health-care institution
24 that intentionally violates the Uniform Health-Care Decisions
25 Act is subject to liability to the aggrieved individual for

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1 damages of [~~two thousand five hundred dollars (\$2,500)~~] five
2 thousand dollars (\$5,000) or actual damages resulting from the
3 violation, whichever is greater, plus reasonable [~~attorneys'~~]
4 attorney fees.

5 B. A person who intentionally falsifies, forges,
6 conceals, defaces or obliterates an individual's advance
7 health-care directive or a revocation of an advance health-care
8 directive without the individual's consent or a person who
9 coerces or fraudulently induces an individual to give, revoke or
10 not [~~to~~] give or revoke an advance health-care directive is
11 subject to liability to that individual for damages of [~~two~~
12 ~~thousand five hundred dollars (\$2,500)~~] five thousand dollars
13 (\$5,000) or actual damages resulting from the action, whichever
14 is greater, plus reasonable [~~attorneys'~~] attorney fees.

15 C. The damages provided in this section are in
16 addition to other types of relief available under other law,
17 including civil and criminal law and law providing for
18 disciplinary procedures. "

19 Section 7. Section 24-7A-11 NMSA 1978 (being Laws 1995,
20 Chapter 182, Section 11) is amended to read:

21 "24-7A-11. CAPACITY. --

22 A. The Uniform Health-Care Decisions Act does not
23 affect the right of an individual to make health-care decisions
24 while having capacity to do so.

25 B. An individual is presumed to have capacity to

Underscored material = new
[bracketed material] = delete

1 make a health-care decision, to give or revoke an advance
2 health-care directive and to designate [~~or disqualify~~] a
3 surrogate.

4 C. Unless otherwise specified in a written advance
5 health-care directive, a determination that an individual lacks
6 or has recovered capacity or that another condition exists that
7 affects an individual instruction or the authority of an agent
8 shall be made by two qualified health-care professionals, one of
9 whom shall be the primary physician. If the lack of capacity is
10 determined to exist because of mental illness or developmental
11 disability, one of the qualified health-care professionals shall
12 be a person whose training and expertise aid in the assessment
13 of functional impairment.

14 D. An individual shall not be determined to lack
15 capacity solely on the basis that the individual chooses not to
16 accept the treatment recommended by a health-care provider.

17 E. An individual, at any time, may challenge a
18 determination that the individual lacks capacity by a signed
19 writing or by personally informing a health-care provider of the
20 challenge. A health-care provider who is informed by the
21 individual of a challenge shall promptly communicate the fact of
22 the challenge to the supervising health-care provider and to any
23 health-care institution at which the individual is receiving
24 care. Such a challenge shall prevail unless otherwise ordered
25 by the court in a proceeding brought pursuant to the provisions

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1 of Section [~~14 of the Uniform Health-Care Decisions Act~~]
2 24-7A-14 NMSA 1978.

3 F. A determination of lack of capacity under the
4 Uniform Health-Care Decisions Act shall not be evidence of
5 incapacity under the provisions of Article 5 of the Uniform
6 Probate Code. "

7 Section 8. Section 24-7A-13 NMSA 1978 (being Laws 1995,
8 Chapter 182, Section 13) is amended to read:

9 "24-7A-13. EFFECT OF THE UNIFORM HEALTH-CARE DECISIONS
10 ACT. --

11 A. The Uniform Health-Care Decisions Act does not
12 create a presumption concerning the intention of an individual
13 who has not made or who has revoked an advance health-care
14 directive.

15 B. Death resulting from the withholding or
16 withdrawal of health care in accordance with the Uniform
17 Health-Care Decisions Act does not for any purpose:

18 (1) constitute a suicide, a homicide or other
19 crime; or

20 (2) legally impair or invalidate a governing
21 instrument, notwithstanding any term of the governing instrument
22 to the contrary. "Governing instrument" means a deed, will,
23 trust, insurance or annuity policy, account with POD (payment on
24 death designation), security registered in beneficiary form
25 (TOD), pension, profit-sharing, retirement, employment or

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[bracketed material] = delete

1 similar benefit plan, instrument creating or exercising a power
2 of appointment or a dispositive, appointive or nominative
3 instrument of any similar type.

4 C. The Uniform Health-Care Decisions Act does not
5 authorize mercy killing, assisted suicide, euthanasia or the
6 provision, withholding or withdrawal of health care, to the
7 extent prohibited by other statutes of this state.

8 D. The Uniform Health-Care Decisions Act does not
9 authorize or require a health-care provider or health-care
10 institution to provide health care contrary to generally
11 accepted health-care standards applicable to the health-care
12 provider or health-care institution.

13 E. The Uniform Health-Care Decisions Act does not
14 authorize an agent or surrogate to consent to the admission of
15 an individual to a mental health-care facility. If the
16 individual's written advance health-care directive expressly
17 permits treatment in a mental health-care facility, the agent or
18 surrogate may present the individual to a facility for
19 evaluation for admission.

20 F. The Uniform Health-Care Decisions Act does not
21 affect other statutes of this state governing treatment for
22 mental illness of an individual [~~involuntarily committed~~]
23 admitted to a mental health-care institution."

24 Section 9. Section 24-7A-14 NMSA 1978 (being Laws 1995,
25 Chapter 182, Section 14) is amended to read:

Underscored material = new
[bracketed material] = delete

1 "24-7A-14. JUDICIAL RELIEF. -- On petition of a patient, the
2 patient's agent, guardian or surrogate, a health-care provider
3 or health-care institution involved with the patient's care, an
4 individual described in Subsection B or C of Section [~~5 of the~~
5 ~~Uniform Health-Care Decisions Act or another person having an~~
6 ~~interest in the patient's welfare]~~ 24-7A-5 NMSA 1978, the
7 district court may enjoin or direct a health-care decision or
8 order other equitable relief. A proceeding under this section
9 is governed by the Rules of Civil Procedure for the District
10 Courts."

11 Section 10. Section 24-7A-16 NMSA 1978 (being Laws 1995,
12 Chapter 182, Section 16) is amended to read:

13 "24-7A-16. TRANSITIONAL PROVISIONS. --

14 A. An advance health-care directive is valid for
15 purposes of the Uniform Health-Care Decisions Act if it complies
16 with the provisions of that act, regardless of when or where
17 executed or communicated.

18 B. The Uniform Health-Care Decisions Act does not
19 impair a guardianship, living will, durable power of attorney,
20 right-to-die statement or declaration or other advance directive
21 for health-care decisions [~~which~~] that is in effect before July
22 1, 1995.

23 C. Any advance directive, durable power of attorney
24 for health care decisions, living will, right-to-die statement or
25 declaration or similar document that is executed in another

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1 state or jurisdiction in compliance with the laws of that state
2 or jurisdiction shall be deemed valid and enforceable in this
3 state to the same extent as if it were properly made in this
4 state."

5 Section 11. Section 30-47-8 NMSA 1978 (being Laws 1990,
6 Chapter 55, Section 8) is amended to read:

7 "30-47-8. TREATMENT IN COMPLIANCE WITH THE [~~RIGHT TO DIE~~]
8 UNIFORM HEALTH-CARE DECISIONS ACT. --

9 A. Nothing in the Resident Abuse and Neglect Act
10 shall be construed to preclude [~~withholding or withdrawing~~
11 ~~treatment in accordance with the Right to Die~~] health care in
12 accordance with the Uniform Health-Care Decisions Act, and it
13 shall be an affirmative defense to any charge brought under the
14 Resident Abuse and Neglect Act that the acts complained of were
15 in accordance with the [~~Right To Die~~] Uniform Health-Care
16 Decisions Act.

17 B. To establish an affirmative defense under
18 Subsection A of this section, the person shall show substantial
19 compliance with the provisions of the [~~Right To Die~~] Uniform
20 Health-Care Decisions Act. "

21 Section 12. Section 45-5-312 NMSA 1978 (being Laws 1975,
22 Chapter 257, Section 5-312, as amended) is amended to read:

23 "45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED
24 GUARDIAN AND GUARDIAN. --

25 A. If the court enters judgment pursuant to

1 Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a
2 limited guardian if it determines that the incapacitated person
3 is able to manage some but not all aspects of his personal care.
4 The court shall specify those powers that the limited guardian
5 shall have and may further restrict each power so as to permit
6 the incapacitated person to care for himself commensurate with
7 his ability to do so. A person for whom a limited guardian has
8 been appointed retains all legal and civil rights except those
9 that have been specifically granted to the limited guardian by
10 the court. The limited guardian shall exercise his supervisory
11 powers over the incapacitated person in a manner that is the
12 least restrictive form of intervention consistent with the order
13 of the court.

14 B. A guardian of an incapacitated person has the
15 same powers, rights and duties respecting the incapacitated
16 person that a parent has respecting his unemancipated minor
17 child, except that a guardian is not legally obligated to
18 provide from his own funds for the incapacitated person and is
19 not liable to third persons for acts of the incapacitated person
20 solely by reason of the guardianship. In particular and without
21 qualifying the foregoing, a guardian or his replacement has the
22 following powers and duties, except as modified by order of the
23 court:

24 (1) to the extent that it is consistent with
25 the terms of any order by a court of competent jurisdiction

1 relating to detention or commitment of the incapacitated person,
2 a guardian is entitled to custody of the incapacitated person
3 and may establish the incapacitated person's place of abode
4 within or without New Mexico;

5 (2) if entitled to custody of the incapacitated
6 person, a guardian shall make provision for the care, comfort
7 and maintenance of the incapacitated person and, whenever
8 appropriate, arrange for his training and education. He shall
9 take reasonable care of the incapacitated person's clothing,
10 furniture, vehicles and other personal effects and commence
11 conservatorship proceedings if other property of the
12 incapacitated person is in need of protection;

13 (3) if no agent is entitled to make health-care
14 decisions for the incapacitated person under the provisions of
15 the Uniform Health-Care Decisions Act, then the guardian shall
16 make health-care decisions for the incapacitated person in
17 accordance with the provisions of that act. In exercising
18 health-care powers, a guardian may consent or withhold consent
19 that may be necessary to enable the incapacitated person to
20 receive or refuse medical or other professional care, counsel,
21 treatment or service. That decision shall be made in accordance
22 with the values of the incapacitated person, if known, or the
23 best interests of the incapacitated person if the values are not
24 known;

25 (4) if no conservator for the estate of the

Underscored material = new
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1 incapacitated person has been appointed, the guardian may
2 institute proceedings to compel any person under a duty to
3 support the incapacitated person or to pay sums for the welfare
4 of the incapacitated person; and

5 ~~[(5) if the incapacitated person is certified~~
6 ~~as terminally ill or in an irreversible coma under the~~
7 ~~procedures described in Section 24-7-5 NMSA 1978, a guardian may~~
8 ~~consent to the physician removing or withholding maintenance~~
9 ~~medical treatment, as defined in Section 24-7-2 NMSA 1978, if~~
10 ~~the guardian concludes that the incapacitated person, if~~
11 ~~competent, would have chosen the termination of that treatment;~~
12 and

13 ~~(6)]~~ (5) the guardian shall exercise his
14 supervisory powers over the incapacitated person in a manner
15 that is least restrictive of his personal freedom and consistent
16 with the need for supervision.

17 C. Any guardian of an incapacitated person for whom
18 a conservator also has been appointed shall control the care and
19 custody of the incapacitated person and is entitled to receive
20 reasonable sums for his services and for room and board
21 furnished to the incapacitated person. The guardian may request
22 the conservator to expend the incapacitated person's estate by
23 payment to third persons or institutions for the incapacitated
24 person's care and maintenance. "

25 Section 13. REPEAL. -- Sections 24-7-1 through 24-7-10 and

Underscored material = new
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1 45-5-106 NMSA 1978 (being Laws 1977, Chapter 287, Sections 1
2 through 8, Laws 1984, Chapter 99, Section 6, Laws 1977, Chapter
3 287, Sections 9 and 10, and Laws 1993, Chapter 301, Section 27,
4 as amended) are repealed.

5 Section 14. EFFECTIVE DATE. -- The effective date of the
6 provisions of this act is July 1, 1997.

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 4, 1997

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 1202

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, line 13, strike "AND REPEALING" and insert in
lieu thereof ", REPEALING AND ENACTING".

2. On page 2, lines 10 and 11, strike "under the age of
eighteen" and insert in lieu thereof "between the ages of sixteen
and eighteen".

3. On page 2, lines 12 and 13, strike "is between the ages
of sixteen and eighteen and".

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HCPAC/HB 1202

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4. On page 3, line 24, strike "physicians" and insert in lieu thereof "physician".

5. On page 4, line 16, after "adult" insert "or emancipated minor".

6. On page 12, line 19, strike "outweight" and insert in lieu thereof "outweigh".

7. On page 13, lines 5 through 8, strike all underscored material.

8. On page 15, line 17, strike "only" and insert in lieu thereof "either".

9. On page 18, between lines 19 and 20, insert the following new subsection:

"G. A health-care decision made by a surrogate for a patient shall not be made solely on the basis of the patient's pre-existing physical or medical condition or pre-existing or projected disability."

10. Reletter the succeeding subsections accordingly and adjust all cross-references to correspond with these amendments.

11. On page 31, between lines 24 and 25, insert the

Underscored material = new
~~[bracketed material]~~ = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HCPAC/HB 1202

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1
2 following new sections:

3
4 "Section 13. A new section of the Uniform Health-Care
5 Decisions Act is enacted to read:

6 " [NEW MATERIAL] DECISIONS FOR UNEMANCIPATED MINORS. --

7
8 A. Except as otherwise provided by law, a parent or
9 guardian of an unemancipated minor may make that minor's health-
10 care decisions.

11
12 B. A parent or guardian of an unemancipated minor
13 shall have the authority to withhold or withdraw life-sustaining
14 treatment for the unemancipated minor, subject to the provisions
15 of this section and the standards for surrogate decision making
16 for adults provided for in the Uniform Health-Care Decisions Act.

17 C. Subject to the provisions of Subsection B of this
18 section, if an unemancipated minor has capacity sufficient to
19 understand the nature of that unemancipated minor's medical
20 condition, the risks and benefits of treatment and the
21 contemplated decision to withhold or withdraw life-sustaining
22 treatment, that unemancipated minor shall have the authority to
23 withhold or withdraw life-sustaining treatment.

24 D. For purposes of Subsection C of this section, a
25 determination of the mental and emotional capacity of an
unemancipated minor shall be determined by two qualified health-

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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2 care professionals, one of whom shall be the unemancipated minor's
3 primary physician and the other of whom shall be a physician that
4 works with unemancipated minors of the minor's age in the ordinary
5 course of that physician's health-care practice. If the
6 unemancipated minor lacks capacity due to mental illness or
7 developmental disability, one of the qualified health-care
8 professionals shall be a person whose training and expertise aid
9 in the assessment of functional impairment.

10 E. If the unemancipated minor's primary physician has
11 reason to believe that a parent or guardian of an unemancipated
12 minor, including a non-custodial parent, has not been informed of
13 a decision to withhold or withdraw life-sustaining treatment, the
14 primary physician shall make reasonable efforts to determine if
15 the uninformed parent or guardian has maintained substantial and
16 continuous contact with the unemancipated minor and, if so, shall
17 make reasonable efforts to notify that parent or guardian before
18 implementing a decision.

19 F. If there is disagreement regarding the decision to
20 withhold or withdraw life-sustaining treatment for an
21 unemancipated minor, the provisions of Section 24-7A-11 NMSA 1978
22 shall apply.

23 G. For purposes of this section, "unemancipated minor"
24 means a person at or under the age of fifteen."

25 Section 14. A new section of the Uniform Health-Care
Decisions Act is enacted to read:

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Underscored material = new
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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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" [NEW MATERIAL] PROHIBITED PRACTICE. --

A. No insurer or other provider of benefits regulated by the New Mexico Insurance Code or a state agency shall require a person to execute or revoke an advance health-care directive as a condition for membership in, being insured for or receiving coverage or benefits under an insurance contract or plan.

B. No insurer may condition the sale, procurement or issuance of a policy, plan, contract, certificate or other evidence of coverage, or entry into a pension, profit-sharing, retirement, employment or similar benefit plan, upon the execution or revocation of an advance health-care directive; nor shall the existence of an advance health-care directive modify the terms of an existing policy, plan, contract, certificate or other evidence of coverage of insurance.

C. The provisions of this section shall be enforced by the superintendent of insurance under the New Mexico Insurance Code. "".

12. Renumber the succeeding sections accordingly and adjust all cross-references to correspond with these amendments.,

and thence referred to the APPROPRIATIONS AND FINANCE COMMITTEE.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

Gary King, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Rios, Sandel, Vigil, King

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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March 16, 1997

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10 Mr. President:

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Your PUBLIC AFFAIRS COMMITTEE, to whom has been
referred

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HOUSE BILL 1202, as amended

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16

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

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Respectfully submitted,

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Shannon Robinson, Chairman

25

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HCPAC/HB 1202

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3 Adopted _____ Not Adopted _____
4 (Chief Clerk) (Chief Clerk)

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6 Date _____

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9 The roll call vote was 6 For 0 Against

10 Yes: 6

11 No: 0

12 Excused: Adair, Boitano, Vernon

13 Absent: None

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Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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March 18, 1997

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10 Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE BILL 1202, as amended

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has had it under consideration and reports same with

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recommendation that it DO PASS.

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Respectfully submitted,

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Fernando R. Macias, Chairman

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Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1 HCPAC/HB 1202

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4 Date _____

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The roll call vote was 5 For 3 Against

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Yes: 5

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No: Payne, Stockard, Vernon

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Excused: None

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Absent: None

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